

CHAPTER 24:05:20

ELIGIBILITY FOR FEDERAL FUNDS

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**24:05:20:02. Form of notice.** The notice in § 24:05:20:01 shall include the following:

(1) Procedures for applicants to follow in completing and submitting requests for Individuals with Disabilities Education Act, Part B funds;

(2) The objectives of the Individuals with Disabilities Education Act, Part B program;

(3) An offer of technical assistance in completing the request for funds;

(4) A general description of the state's procedures for reviewing and approving requests; and

(5) A statement of a local education agency's obligation to make all documents relating to the eligibility of the district, including the request for funds and any evaluations, periodic program plans, or reports required by the state for the Individuals with Disabilities Education Act, Part B project available to parents of children with disabilities and to the general public.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:20:03. Review and approval process.** Requests for funds submitted to the ~~division~~ department shall be reviewed by the ~~Office of Special Education~~ department's special education programs for consistency with the Individuals with Disabilities Education Act, Part B requirements.

**Source:** 16 SDR 41, effective September 7, 1989; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:20:04. Additional requirements.** In addition to the content requirements of the request for funds itself, reviewers from the ~~Office of Special Education~~ department's special education programs shall take into account a local education agency's failure to correct an identified deficiency found through state monitoring or a complaint investigation, consider any decision made in a due process hearing which was adverse to the local education agency, and consider any previous decisions that resulted in the withholding of funds.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:20:06. Review by state director.** ~~Final recommendations shall be submitted to the state director of special education for approval~~ Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** ~~SDCL 13-37-1.1.~~

**Law Implemented:** ~~SDCL 13-37-1.1.~~

**24:05:20:07. Notification of grant award.** Once the request for funds is approved, the state director of special education and the Office of Finance and Management shall notify a local education agency, in writing, of the following:

- (1) The amount of the grant;
- (2) The period during which the local education agency may obligate funds; and
- (3) The federal requirements that apply to the grant under article 24:05.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:20:09. Project evaluation and monitoring.** The ~~division~~ department shall annually evaluate projects approved under the Individuals with Disabilities Education Act, Part B, through the review and analysis of required reports submitted by local education agencies including information on the use of Part B funds and the performance of children with disabilities on state performance indicators and goals. In addition, the ~~Office of Special Education~~ department's special education program staff shall review the implementation of local education agency Part B projects during the state's monitoring process.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:20:10. Consolidated requests.** The ~~division~~ department may require local education agencies to submit a consolidated request for payments under the Individuals with Disabilities Education Act, Part B, if it determines that an individual request will be disapproved because the local education agency is unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of children with disabilities.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:20:12. Additional requirements for consolidated requests.** In addition to the requirements of §§ 24:05:20:01 to 24:05:20:11, inclusive, the following provisions are applicable. The ~~division~~ department shall also annually notify those districts within the state that may be required to submit a consolidated request:

(1) A consolidated request must meet the same minimum requirements as a single district request and must be signed by the superintendent of each participating school district;

(2) School districts participating in a consolidated request are jointly responsible for implementing a program of free appropriate public education for all their students with disabilities, including the least restrictive environment requirements;

(3) Noncompliance with the Individuals with Disabilities Education Act, Part B requirements by any single school district participating in a consolidated request constitutes noncompliance by all districts involved;

(4) Each school district participating in a consolidated request must use an accounting system that permits identification of the costs paid for under its subgrant;

(5) Excess cost for a consolidated request shall be computed on the basis of the average of the combined minimum amounts each school district spends for elementary and secondary school students; and

(6) The state may not make a subgrant that exceeds the sum of the entitlements of the separate local education agencies.

The provisions of this section only apply to the submission of a consolidated request for Individuals with Disabilities Education Act, Part B funds. They are not applicable to the establishment of cooperative educational service units.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:20:13. Direct service by ~~division~~ department.** The ~~division~~ department may not distribute funds to a local education agency if the local education agency, in any fiscal year, meets any one of the following conditions:

(1) ~~Does not submit a request that meets the requirements of the Individuals with Disabilities Education Act, Part B~~ Has not provided the information needed to establish the eligibility of the district or state agency, or elected not to apply for its Part B allotment, under Part B of the IDEA;

- (2) Is unable to establish and maintain programs of free appropriate public education that meet the requirements of this article;
- (3) Is unable or unwilling to be consolidated with ~~other~~ one or more local educational agencies in order to establish and maintain those programs; or
- (4) Has one or more children with disabilities who can best be served by a regional or state program or service-delivery system designed to meet the needs of those children.

The ~~division~~ department shall use undistributed funds to ensure a free appropriate public education to children with disabilities residing in the area served by the local education agency. If the local allotment is not sufficient to ensure FAPE, the ~~division~~ department may use whatever funding sources are available in the state to meet the FAPE requirements.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:20:14. Direct services.** The ~~division~~ department may provide special education and related services directly by contract or through other arrangements and at locations it considers appropriate. The excess cost requirements do not apply to the ~~division~~ department. The manner in which the education and services are provided must be consistent with the requirements of the Individuals with Disabilities Education Act, Part B, 34 C.F.R. Part 300, including the least restrictive environment provisions.

**Source:** 16 SDR 41, effective September 7, 1989; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:20:14.01. Excess cost requirements defined.** "Excess costs" are those costs that are in excess of the average annual per student expenditure in a local education agency during the preceding school year for an elementary or secondary school student.

Excess costs must be computed after deducting amounts received under Part B of IDEA; Part A of Title I of the Elementary and Secondary Act of 1965 as amended ~~through September 28, 1984 to January 1, 2007~~, or under ~~Part~~ Parts A and B of Title ~~VII~~ III of that Act; and any state or local funds expended for programs that would qualify for assistance under any of those parts but excluding any amounts for capital outlay or debt service.

**Source:** 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:20:15. Retention of records for federal programs.** ~~Records related to federal grant funds and compliance under the Individuals with Disabilities Education Act shall be retained by the state and the subgrantee for three years after completion of the activity for which they use grant or subgrant funds~~ Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** ~~SDCL 13-37-1.1.~~

**Law Implemented:** ~~SDCL 13-37-1.1.~~

**24:05:20:16. Required records of grant funds.** ~~Records related to grant funds shall be kept that fully show the following:~~

- ~~(1) The amount of funds under the grant;~~
- ~~(2) How the funds were used;~~
- ~~(3) The total cost of the project;~~
- ~~(4) The share of that cost provided from other sources;~~
- ~~(5) Other records to facilitate an effective audit;~~
- ~~(6) Approved project requests;~~
- ~~(7) Grant award notices; and~~
- ~~(8) Results of fiscal audits~~ Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** ~~SDCL 13-1-12.1, 13-37-1.1.~~

**Law Implemented:** ~~SDCL 13-37-1.1.~~

**24:05:20:17. Required records of program compliance.** ~~Records related to program compliance shall include the following, at a minimum:~~

- ~~(1) Interim and final monitoring reports, including correspondence;~~
- ~~(2) Negotiated corrective actions plans resulting from federal and state monitoring visits;~~
- ~~(3) Documentation of corrective actions taken by the agency as a result of federal or state monitoring;~~
- ~~(4) Final resolutions of complaints filed against the state or a subgrantee; and~~
- ~~(5) Documentation supporting the implementation of a hearing officer's final decision in a due process hearing.~~

~~The individuals responsible for maintaining these program and fiscal records are the state directors of special education and finance and their counterparts at the local level~~  
Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** ~~SDCL 13-37-1.1.~~

**Law Implemented:** SDCL 13-37-1.1.

**24:05:20:18. Program monitoring and evaluation.** In conjunction with its general supervisory responsibility under the Individuals with Disabilities Education Act, Part B, the ~~Division of Education Services and Resources, Office of Special Education~~ special education programs of the Office of Educational Services and Support shall monitor agencies, institutions, and organizations responsible for carrying out special education programs in the state, including any obligations imposed on those agencies, institutions, and organizations.

The department shall ensure:

(1) That the requirements of this article are carried out;

(2) That each educational program for children with disabilities administered within the state, including each program administered by any other state or local agency, but not including elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior:

(a) Is under the general supervision of the persons responsible for educational programs for children with disabilities in the department; and

(b) Meets the educational standards of the state education agency, including the requirements of this article; and

(3) In carrying out this article with respect to homeless children, the requirements of the McKinney-Vento Homeless Assistance Act, as amended to January 1, 2007, are met.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:20:18.01. State monitoring - - Primary focus.** The department shall monitor the implementation of this article, enforce this article in accordance with § 24:05:20:23.02 and annually report on performance under this article. The primary focus of the department's monitoring activities shall be on:

(1) Improving educational results and functional outcomes for all children with disabilities; and

(2) Ensuring that public agencies meet the program requirements under Part B of the IDEA, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.

As a part of its responsibilities under this section, the department shall use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in § 24:05:20:18.02 and the indicators established by the U.S. Secretary of Education for the state performance plan.

**Source:**

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:20:18.02. State monitoring - - Quantifiable indicators and priority areas.** The department shall monitor school districts using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in those areas:

(1) Provision of FAPE in the least restrictive environment;

(2) Department exercise of general supervision, including child find, effective monitoring, the use of resolution meetings, mediation, and a system of transition services as defined in this article and article 24:14; and

(3) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.

**Source:**

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:20:18.03. State performance plan - - General.** The department shall have in place a performance plan that evaluates the state's efforts to implement the requirements and purposes of Part B of the IDEA, and describes how the department will improve such implementation.

The department shall submit the state's performance plan to the U.S. Secretary of Education for approval in accordance with the approval process described in Part B of the IDEA.

The department shall review its state performance plan at least once every six years, and submit any amendments to the U.S. Secretary of Education.

As part of the state performance plan, the department shall establish measurable and rigorous targets for the indicators established by the U.S. Secretary of Education under the priority areas described in § 24:05:20:18.02.

**Source:**

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:20:18.04. State performance plan - - Data collection.** The department shall collect valid and reliable information as needed to report annually to the U.S. Secretary of Education on the indicators established by the U.S. Secretary of Education for the state performance plan.

If the U.S. Secretary of Education permits the department to collect data on specific indicators through state monitoring or sampling, and the department collects the data through state monitoring or sampling, the department shall collect data on those indicators for each school district at least once during the period of the state performance plan.

Nothing in Part B of the IDEA authorizes the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under Part B of the IDEA.

**Source:**

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:20:18.05. State use of targets and reporting.** The department shall use the targets established in the state's performance plan and the priority areas described in § 24:05:20:18.02 to analyze the performance of each school district.

The department shall:

(1) Report annually to the public on the performance of each school district on the targets in the state performance plan; and

(2) Make the state performance plan available through public means, including by posting on the website of the department, distribution to the media, and distribution through public agencies.

If the department collects performance data through state monitoring or sampling, the department shall include in its report the most recently available performance data on each district, and the date the data were obtained.

The department shall report annually to the U.S. Secretary of Education on the performance of the state under the state performance plan.

The department may not report to the public or the U.S. Secretary of Education any information on performance that would result in the disclosure of personally identifiable information about individual children, or that is insufficient to yield statistically reliable information.

**Source:**

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:20:19. Collection and analysis of data.** The ~~division~~ department shall collect and analyze information sufficient to identify any deficiency of a public or private agency providing services to eligible children within the state.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:20:20. Deficiency correction procedures.** The ~~division~~ department shall require local education agencies to correct deficiencies in program operations that are identified through monitoring as soon as possible, but no later than one year from written identification of the deficiency. The ~~division~~ department shall order agencies to take corrective actions and to submit a plan for achieving and documenting full compliance.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:20:20.01. Notification of deficiency.** ~~If the division determines a request to be deficient, the division shall notify the applicant informally of any deficiency in the request and shall give the applicant the opportunity to correct the request. If the applicant is unwilling or unable to change its request or the applicant disagrees with the decision of the division, the division shall send a written formal notice of intent to disapprove the request. The division shall send the notice to the applicant's chief executive officer stating the actions that the applicant must take to correct its request~~ Repealed.

**Source:** 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:20:21. Immediate procedures.** ~~Public agencies shall take the following steps immediately if they are ordered to correct deficiencies:~~

- ~~(1) Correct each identified deficiency;~~
- ~~(2) Prevent the recurrence of each identified deficiency; and~~
- ~~(3) Establish a schedule for achieving full compliance approved by the division~~

Repealed.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:20:22. Division to retain records for three years.** ~~The division shall maintain monitoring records along with other records needed to show compliance with the program and administrative responsibilities under the Individuals with Disabilities~~

~~Education Act, Part B, 34 C.F.R. Part 300, for three years after completion of the activity for which it uses Individuals with Disabilities Education Act, Part B funds.~~

~~The division shall use available methods for the enforcement of any obligations imposed upon responsible agencies, institutions, and organizations Repealed.~~

**Source:** 16 SDR 41, effective September 7, 1989; 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** ~~SDCL 13-37-1.1.~~

**Law Implemented:** ~~SDCL 13-37-1.1.~~

**24:05:20:23. Compliance.** If ~~an agency~~ a school district either fails to voluntarily take steps to correct an identified deficiency or fails to take any of the corrective actions specified by the ~~division~~ department or incorporated in a corrective action plan submitted by the ~~agency~~ school district and approved by the ~~division~~ department, the ~~division~~ department must notify ~~that agency~~ the school district of the following:

(1) The failure to voluntarily correct an identified deficiency constitutes a failure on their part to administer their special education program in compliance with federal law;

(2) The actions the ~~division~~ department intends to take in order to enforce compliance with state and federal law;

(3) The right to a hearing prior to the ~~division's~~ department's exercise of its enforcement responsibility; and

(4) The consequence the ~~division's~~ department's enforcement action would have on continued and future state and federal funding of that ~~agency's~~ school district's special education programs.

**Source:** 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:20:23.01. Hearings on eligibility for federal funds.** The applicant's chief executive officer may file a hearing request as follows:

(1) The applicant must request the hearing within 30 days after the action of the ~~division~~ department;

(2) Within 30 days after it receives a request, the ~~division~~ department shall hold a hearing on the record pursuant to SDCL chapter 1-26 and shall review its action;

(3) No later than 10 days after the hearing the ~~division~~ department shall issue its written ruling, including findings of fact and reasons for the ruling;

(4) If the ~~division~~ department determines that its action was contrary to state or federal statutes or rules that govern the applicable program, the ~~division~~ department shall rescind its action;

(5) If the ~~division~~ department does not rescind its final action after a review, the applicant may appeal to the U. S. secretary of education. The applicant shall file a notice of the appeal with the U. S. secretary of education within 20 days after the applicant has been notified by the ~~division~~ department of the results of the ~~division's~~ department's review. If supported by substantial evidence, the decision of the ~~division~~ department is final;

(6) The U.S. secretary of education may also issue interim orders to the ~~division~~ department as necessary and appropriate pending appeal or review; and

(7) If the U.S. secretary of education determines that the action of the ~~division~~ department was contrary to the Individuals with Disabilities Education Act and implementing regulations, the secretary shall issue an order to the ~~division~~ department to take appropriate action.

The ~~division~~ department shall make available to the applicant during regular business hours all records of the ~~division~~ department pertaining to any review or appeal it is conducting under this section, including records of other applicants.

If the ~~division~~ department does not comply with any provision of this section, or with any order of the U.S. secretary of education, the secretary shall immediately terminate all assistance to the ~~division~~ department under the Individuals with Disabilities Education Act or issue such other orders deemed appropriate to achieve compliance.

**Source:** 20 SDR 33, effective September 8, 1993; 23 SDR 31, effective September 8, 1996; 26 SDR 150, effective May 22, 2000.

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:20:23.03. State enforcement - - General.** If the department determines that a school district is not meeting the requirements of Part B of the IDEA, including the targets in the state's performance plan, the department shall prohibit the district from reducing the district's maintenance of effort under chapter 24:05:19 for any fiscal year.

Nothing in this chapter restricts the department from using any other authority available to it to monitor and enforce the requirements of Part B of the IDEA.

**Source:**

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.

**24:05:20:23.04. State enforcement - - Determinations.** On an annual basis, based on local district performance data, information obtained through monitoring visits, and other information available, the department shall determine whether each school district meets the requirements and purposes of Part B of the IDEA. If the department determines, for two consecutive years, that a school district needs assistance in implementing the requirements of Part B of the IDEA, the department shall take one or more of the following actions:

(1) Advise the district of available sources of technical assistance that may help the district address the areas in which the district needs assistance. Assistance may include assistance from the department's special education programs, other offices of the department, other state agencies, technical assistance providers approved by the department, and other federally-funded nonprofit agencies. The department shall require the district to work with appropriate entities. Such technical assistance may include:

(a) The provision of advice by experts to address the areas in which the district needs assistance, including explicit plans for addressing the area for concern within a specified period of time;

(b) Assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically-based research;

(c) Designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and

(d) Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service agencies, national centers of technical assistance supported under Part D of the IDEA, and private providers of scientifically based technical assistance: and

(2) Identify the district as a high-risk grantee and impose special conditions on the district's grant under Part B of the IDEA.

If the department determines, for three or more consecutive years, that a district needs intervention in implementing the requirements of Part B of the IDEA, the department shall require the district to prepare a corrective action plan if the department determines that the district should be able to correct the problem within one year or withhold, in whole or in part, any further payments to the district under Part B of the IDEA.

Notwithstanding the provisions of this section, if the department determines that a district needs substantial intervention in implementing the requirements of Part B of the IDEA or that there is a substantial failure to comply with any condition of the district's

eligibility under Part B of the IDEA, the department shall withhold, in whole or in part, any further payments to the district under Part B of the IDEA.

**Source:**

**General Authority:** SDCL 13-37-1.1.

**Law Implemented:** SDCL 13-37-1.1.